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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

FLOYD COLLINS,

No. C 05-3303 CRB

Petitioner

**ORDER DENYING MOTION TO  
DISMISS**

v.

THOMAS L. CAREY,  
Respondent.

Petitioner, who is in the custody of the California Department of Corrections, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. section 2254. Respondent moved to dismiss the petition as untimely. For the reasons stated at oral argument, respondent's motion is DENIED on the ground that extraordinary circumstances warrant equitable tolling.

Respondent shall file with this Court and serve upon the petitioner, within thirty (30) days of the issuance of this Order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the answer a copy of all portions of the state trial and appellate record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition. If the petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it upon the

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1 respondent within thirty (30) days of his receipt of the answer.

2 **IT IS SO ORDERED.**

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4 Dated: November 21, 2005  
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CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE